

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL GRIFFEN, JUDGE

DIVISION III

CA07-966

February 27, 2008

KEVIN HOUSE and KIM HOUSE
APPELLANTS

v.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES
APPELLEE

AN APPEAL FROM CLEBURNE
COUNTY CIRCUIT COURT
[No. JV-2005-35]

HONORABLE STEPHEN CHOATE,
CIRCUIT JUDGE

AFFIRMED

This is an appeal from an order of the Cleburne County Circuit Court that terminated the parental rights of appellants Kim and Kevin House to their son R.H., born May 10, 2003. Appellants' sole argument is that there is insufficient evidence to support the termination of their parental rights. We find no error and affirm the trial court's decision.

This case commenced on March 12, 2005, when appellee Arkansas Department of Human Services (DHS) exercised a seventy-two-hour hold over appellants' two children, R.H. and A.H., after appellants were arrested on drug charges.¹ According to an affidavit in support of the petition for emergency custody, appellants admitted that they could not pass a drug test.

¹A.H. was adopted in April 2005 and is not the subject of this appeal.

On March 15, 2005, a probable-cause hearing took place. The court determined that probable cause for entry of the emergency order existed. Custody of R.H. continued with DHS, and DHS was authorized to arrange appropriate visitation.

At the adjudication hearing, the circuit court determined that R.H. was dependent-neglected as a result of the parents' admitting that they were arrested on drug charges and testimony that the parents had drugs and drug paraphernalia in the home within the reach of the children. The parents were ordered to cooperate with DHS; follow the case plan; establish and maintain a stable home; obtain and maintain stable employment, unless they were receiving disability; and refrain from using illegal drugs or legal drugs unless prescribed by a doctor.

After two review hearings in which the circuit court found that appellants had substantially complied with the case plan and a thirty-day trial visit with R.H., custody of R.H. was returned to appellants on November 16, 2005.

On May 9, 2006, yet another review hearing was held. The court found that appellants had not complied with the case plan — by using drugs and not completing counseling. Appellants were ordered to follow the case plan, to not use or possess drugs, to submit to random drug testing, and to successfully complete counseling.

On August 29, 2006, a review hearing was held where appellants were found to be in partial compliance with the case plan and R.H. was allowed to remain in his parents' custody. The court further ordered appellants to be drug tested at least three times per week.

On November 13, 2006, R.H. and another sibling, C.M., were removed from appellants' care based on appellants' refusal to have contact with DHS and CASA; appellants'

allegedly having made statements that they would remain in hiding until the December 14, 2006, hearing date; appellants' failure to submit to a hair-follicle test; and the fact that the children had been left with the maternal grandmother. R.H. was placed in the custody of DHS. On December 14, 2006, a review hearing was held with Kim House present. The court found the goal remained continued placement with the parents. Both parents were found to have failed to comply with the court's order to submit to hair-follicle tests, to maintain stable employment, and to make themselves available to DHS. Further, the court found Kim House to be in contempt for not obeying the order not to use or possess controlled substances and sentenced her to thirty days in jail or that she successfully complete an in-patient drug-treatment program.

On December 20, 2006, a motion seeking to terminate reunification services was filed by R.H.'s attorney ad litem on the grounds that there was little likelihood that services to the family will result in successful reunification.

A hearing was held on January 10, 2007, on the motion to terminate services. The court found clear and convincing evidence that there is little likelihood that services will result in successful reunification based on the two removals of R.H. from appellants' care, appellants' positive tests for illegal drugs, extreme measures appellants took to avoid DHS and CASA, exposure of the children to domestic violence, illegal drug trades in front of the children, appellants' short-term efforts at rehabilitation for drug usage, their failure to maintain stable employment, their failure to make themselves available to DHS and CASA, and the continual blame appellants placed on everyone else for their inability to remedy the conditions that caused the removal of the children.

On March 7, 2007, a permanency-planning hearing was held, and the court found the case was moving toward the goal of termination and adoption. Further, the court found that appellants had not submitted to a hair-follicle test, that they admitted they would test positive for drugs, and that they had not maintained stable employment. The court also found that appellants were in drug rehabilitation.

On April 16, 2007, DHS filed a petition seeking to terminate appellants' parental rights, alleging that R.H. had been out of the home for twelve months; that other factors had arisen since the original petition for dependency-neglect that demonstrated that the return of the child was contrary to his health, safety, and welfare and that appellants manifested incapacity or indifference to remedy or rehabilitate; and that appellants subjected the child to aggravated circumstances in that there had been a determination that there was little likelihood that services would result in a successful reunification.

On May 9, 2007, a hearing was held on the termination petition. Caseworker Tammy Grimshaw recounted the history of the case and recommended that appellants' parental rights be terminated. She also described the likelihood of R.H.'s being adopted as "very high" and added that several families had already shown an interest in adopting him. She recounted the difficulties she had in maintaining contact with appellants and in conducting random drug screens. She also testified that both parents entered rehabilitation programs after the child was removed the second time, with the mother entering after some delay. According to Grimshaw, the mother had not complied with the case plan requirements. Grimshaw also testified that appellants would not have custody of R.H. returned upon their completion of the drug-treatment program, stating that they would have to show stability and comply with

the case plan requirements. She added that it would be three to six months after their completion of the program before DHS would consider returning the child.

Kim House testified that she entered a faith-based treatment center in Marked Tree, Arkansas, on January 11, 2007, and had been there approximately four months at the time of trial. Her husband had entered into a program the previous November. She said that she and her husband realized how serious the situation was and that they could not overcome their addictions without help. She admitted that she tested positive for drug use at the December 2006 hearing. She acknowledged that the counselors at her program were not licensed counselors. On cross-examination, she asserted that she did not enter a licensed facility because of the lower success rate for such facilities when compared to her faith-based program. She asserted that she had not used drugs in the past six months. She anticipated that her husband would complete the program in July, with her completion date being in August.

Kevin House's testimony was consistent with his wife's testimony. He added that he did avoid contact with DHS for a period in the fall of 2006. He said that, in the beginning of the case, he had other commitments he had to fulfill rather than attend treatment. He could not estimate how long it would take to have stable housing and a job. He also acknowledged that he had not been tested for drug usage while at this program.

Robert Strauss, a counselor at the treatment program in which appellants were enrolled, testified that he saw no reason for appellants not to successfully complete their program. He added that there were programs for appellants to have R.H. with them while they completed additional training and obtained full-time employment. He described

appellants as being determined to change their lives. There were letters from others at the program supporting appellants and reporting on their progress.

The circuit court took the matter under advisement and, on June 20, 2007, entered an order terminating appellants' parental rights. The court found that the child had been found dependent-neglected and had remained out of the home for twelve months; that other factors had arisen since the original petition for dependency-neglect that demonstrated that the return of the child was contrary to his health, safety, and welfare and that the appellants manifested the incapacity or indifference to remedy or rehabilitate; and that the appellants subjected the child to aggravated circumstances in that there was little likelihood that services would result in a successful reunification. Appellants filed a timely notice of appeal and now challenge the sufficiency of the evidence to support the termination of their parental rights.

We review termination of parental rights cases de novo. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Kight v. Arkansas Dep't of Human*

Servs., 94 Ark. App. 400, 231 S.W.3d 103 (2006). Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.*

Appellants argue that the circuit court erred in finding that there was sufficient evidence to support the termination of their parental rights. We first observe that we must affirm this case because appellants do not challenge all of the grounds asserted for the termination of their parental rights. *See Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002); *Pearrow v. Feagin*, 300 Ark. 274, 778 S.W.2d 941 (1989); *Camp v. State*, 66 Ark. App. 134, 991 S.W.2d 611 (1999). Specifically, they acknowledge that R.H. had been out of their custody for more than twelve months and that the conditions leading to the child's removal were not remedied.

Even were we to address the merits of appellants' arguments, we would still have to affirm the termination of their parental rights. In their brief, appellants admit that, after R.H. was returned to them, they continued to use illegal drugs, with Kim House testing positive for drugs at a December 2006 hearing. At a March 2007 hearing, appellants stipulated that they could not pass drug tests. They also failed to submit to a hair-follicle drug test, as ordered. This evidence of their continued noncompliance with the circuit court's order to refrain from using illegal drugs further shows indifference to remedying the problem. *See Ullom v. Arkansas Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000); *Carroll v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Appellants assert that the circuit court should have given more weight to the progress that they made following R.H.'s second removal in November 2006. Evidence that a parent begins to make improvement as termination becomes more imminent will not outweigh

other evidence demonstrating a failure to comply and remedy the situation that caused the children to be removed in the first place. *Camarillo-Cox v. Arkansas Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). As mentioned above, there was also evidence that appellants were continuing to use drugs during this period.

Finally, appellants argue that there is insufficient evidence of potential harm to R.H. should he be returned to their care. According to Ark. Code Ann. § 9-27-341 (Repl. 2007), the circuit court was only required to consider the potential harm to the health and safety of a child that might result from continued contact with the parent. Even though the court was not required to find that actual harm would result or to affirmatively identify a potential harm, it is beyond argument that a parent's continued illegal drug use is harmful to the child. Furthermore, the supreme court has directed that the harm analysis be conducted in broad terms—encompassing the harm the child suffers from the lack of stability in a permanent home. See *Bearden v. Arkansas Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). Finally, the court's potential-harm inquiry is but one of many factors that a circuit court must consider in a best-interest analysis. *Id.*

Affirmed.

VAUGHT and BAKER, JJ., agree.